

Chemical Data Reporting Inorganic Byproduct Chemical Substance – Negotiated Rulemaking

Background:

- EPA intends to establish a negotiated rulemaking committee under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA).
- The object of the negotiated rulemaking committee will be to negotiate a proposed rule that would limit chemical data reporting requirements under section 8(a) of the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, for manufacturers of any inorganic byproduct chemical substances, when such byproduct chemical substances are subsequently recycled, reused, or reprocessed.
- The purpose of the negotiated rulemaking committee will be to conduct discussions in a good faith attempt to reach consensus on proposed regulatory language.
- This negotiation process is required by section 8(a)(6) of TSCA.
- The negotiated rulemaking committee will consist of representatives of parties with a definable stake in the outcome of the proposed requirements.
 - Representation on the committee may be direct, where each member represents a specific interest.
 - Representation may also be indirect, through coalitions of parties formed for this purpose.
 - EPA is also a member of the committee, representing the Federal government's own set of interests.

Concept of Negotiated Rulemaking:

- Negotiated rulemaking is a process in which a proposed rule is developed by a committee composed of representatives of all those interests that will be significantly affected by the rule.
- Decisions are made by consensus, which the NRA defines as “unanimous concurrence among interests represented on a negotiated rulemaking committee,” unless the negotiated rulemaking committee itself unanimously agrees to use a different definition. [P.L. 102-648, as amended by P.L. 102-354]

Negotiated Rulemaking Process:

- To start the process, the Agency identifies all interests potentially affected by the rulemaking under consideration.
 - To help in this identification process, the Agency publishes a notice in the Federal Register, which identifies a preliminary list of interests and requests public comment on that list. [EPA published this list on December 1, 2016; FR Vol. 81, No. 241 (90843-90848)].
- Following receipt of the comments, the Agency establishes a committee representing these various interests to negotiate a consensus on the terms of a proposed rule.
- The negotiated rulemaking committee is facilitated by a trained mediator, who facilitates the negotiation process. The role of this mediator is to apply proven consensus building techniques to the advisory committee setting.

Negotiated Consensus:

Ex. 5 - Deliberative Process